

No. 20,920

IN THE

**United States Court of Appeals  
For the Ninth Circuit**

CHINA UNION LINES, LTD.,  
a corporation,

*Appellant,*

vs.

STATES STEAMSHIP COMPANY,  
a corporation,

*Appellee.*

**CLOSING BRIEF FOR APPELLANT  
CHINA UNION LINES, LTD.**

GRAHAM JAMES & ROLPH  
ALEXANDER D. CALHOUN, JR.  
STANLEY F. GILLMAR  
DAVID C. PHILLIPS

310 Sansome Street  
San Francisco, California 94104

*Attorneys for Appellant  
China Union Lines.*

FILED

SEP 22 1965

U.S. DIST. CT. S.D.

FEB 15 1967



## Subject Index

---

### I

	Page
Inaccuracies in appellee's brief .....	1

### II

Appellee raises alleged faults of UNION STAR not found by the trial court .....	4
(a) UNION STAR lowered its anchor ball immediately upon getting underway and did not make a misleading signal .....	4
(b) UNION STAR blew all required whistle signals ....	5

---

## Table of Authorities Cited

---

### Cases

	Page
N. M. Paterson & Sons, Limited v. City of Chicago, 209 F. Supp. 576, 1962 A.M.C. 2215 (N.D. Ill. E.D., 1962) .....	7
The Pilot Boy, 115 Fed. 873 (4th Cir. 1902) .....	6

### Texts

Staring, Contribution and Division of Damage in Admiralty and Maritime Cases, 45 Cal. L. Rev. 304 (1957) .....	7
--	---



No. 20,920

IN THE

**United States Court of Appeals  
For the Ninth Circuit**

---

CHINA UNION LINES, LTD.,  
a corporation,

*Appellant,*

vs.

STATES STEAMSHIP COMPANY,  
a corporation,

*Appellee.*

---

**CLOSING BRIEF FOR APPELLANT  
CHINA UNION LINES, LTD.**

---

**I**

**INACCURACIES IN APPELLEE'S BRIEF**

There are certain inaccuracies and misleading inferences in Appellee's brief which should be pointed out so that the Court may fairly weigh the contentions of the parties.

1. At the bottom of page 8, Appellee implies that there is proof of a strong current in the Coconut Bay area by pointing out that the UNION STAR changed heading 221½ degrees from the time she anchored until she got underway. Actually the UNION STAR's heading changed

only 12 degrees from due north to 348°. When one realizes that the UNION STAR was at anchor for four hours, this change is hardly indicative of a current which would turn the ILLINOIS 40° in a contrary direction in about ten minutes.

2. At the bottom of page 10, Appellee implies that Captain Sorensen regularly navigated the ILLINOIS out of the Saigon River in reliance on the exit range. Yet Captain Sorensen testified that the exit range was not usually pointed out but was pointed out by the pilot on this one trip because the sea buoy was missing (TR 107: 11-25); Pilot Hai noted that the exit along the range line with the sea buoy missing was difficult (TR 42:20-25, 43: 1-4).

3. At the bottom of page 11 in the footnote, Appellee implies that the quotation in Appellant's brief is false. Actually, the citation is correct and the disagreement relates to the inference to be derived from the language.

4. At the bottom of page 11 in the footnote, Appellee implies that there were no other witnesses not produced by ILLINOIS who knew the details of the navigation of the ILLINOIS, yet counsel for Appellee admitted that the Junior Third Officer, who was on the bridge of the ILLINOIS, Garfield Greene, was contacted by Appellee for a deposition. (Thereafter Mr. Greene was said to be unavailable.)

5. At the top of page 16, Appellee implies that the chart attached to Appellant's brief is improperly drawn and misleading. Actually, the angle of the exit range represented in both Appellant's and Appellee's briefs are

exactly the same ( $182^{\circ}$ ). The difference is that Appellant's line is drawn along the shore line on Point Vung. The bearing line is defined by Pilot Dy as the 164-foot summit near Nui Nua by the Point Vung (TR 206:24-25). The range must have been a visible feature, and the shore line was probably the most visible part of the point. Appellee's line, on the other hand, is drawn along the road inland in order to narrow the space between the line and the wreck buoy.

6. Appellee implies at the bottom of page 24 that there was inadequate room for the UNION STAR to move between the range line and the Korhyn wreck buoy. However, the contentions are both erroneous and misleading. If ILLINOIS were 400 meters from the wreck buoy and UNION STAR intended to pass 100 meters from the buoy, this would leave 300 meters (984.30 feet) between ILLINOIS and UNION STAR at the time of passing, *not* the 146 meters stated by Appellee. UNION STAR had a beam of 50 feet. This means that the UNION STAR would have had an area approximately 18 times that required for a port-to-port passing of the ILLINOIS. This is hardly an inadequate area for navigation. Even if the distance between the vessels were 146 meters (479.03 feet), this would still provide over eight times the width necessary for safe passage.

7. Appellee, at the bottom of page 21 misrepresents the statement of Appellant with regard to *The Catalina*. It is not cited in Appellant's Opening Brief for the proposition which Appellee contends, but rather for the proposition stated—that the burden of proving the lookout was faulty, i.e., inattentive, was on the vessel claiming faulty lookout.

## II

**APPELLEE RAISES ALLEGED FAULTS OF UNION STAR NOT  
FOUND BY THE TRIAL COURT**

The trial court found that UNION STAR "violated Article 29 of the International Rules in failing to maintain a proper lookout." (Conclusion of Law III, Record 93:4 and 5) The only finding of fact actually made by the trial court related to the question of adequacy of lookout (Conclusion of Fact VII, Record 91:16-26). Appellee has not appealed the failure to find further fault on the part of UNION STAR, and it is not appropriate for Appellee to argue other allegations of fault of UNION STAR.

However, Appellee's assertions cannot be received without comment. Even if Appellee could argue these allegations at this time, they should not prevail.

- (a) **UNION STAR** lowered its anchor ball immediately upon getting underway and did not make a misleading signal

As Appellee points out, there is a clear conflict of testimony. Appellee suggests that the testimony of Captain Hu and Pilot Dy as well as Captain Sorensen may be self serving and that the resolution ought to rest on the testimony of Pilot Hai and Seaman Dobas. Appellee agrees that the testimony of Captain Sorensen is misleading. Seaman Dobas' testimony is subject to strong doubt as he was on the main deck of ILLINOIS, and his vision forward was totally obscured or at least severely handicapped by the high forecastle and masts of the ILLINOIS. Captain Sorensen himself notes that an observer on the main deck could not see the UNION STAR (TR 141:15 to 144:9).



Hence, Dobas' detailed observations of activity on UNION STAR do not ring true.

Pilot Hai was in the pilot boat alongside the ILLINOIS at 1139 (TR 113:18). The UNION STAR got underway only about two minutes earlier (Ex M, N). Considering the time required to leave the bridge and make way to the deck of the ILLINOIS, bring the pilot boat alongside and descend the pilot ladder into the boat, Pilot Hai probably left the bridge of ILLINOIS before or at the time UNION STAR got underway. Hence, Pilot Hai's statement that he saw the anchor ball of the UNION STAR *before* he left the bridge of the ILLINOIS is not indicative of a failure to lower the UNION STAR anchor ball (TR 43:19-20). Consequently, the clear and unequivocal statements of Captain Hu (TR 229:17-25; 230:1-4) and Pilot Hai (TR 204:2-16) that they personally saw the anchor ball of UNION STAR lowered as soon as she got underway should prevail.

**(b) UNION STAR blew all required whistle signals**

In a very imaginative section, Appellee conjectures that the UNION STAR changed course from 348° to 353° without blowing a whistle signal. This is all based upon the single statement in the cross-libel that the one-blast signal was given at the time of the UNION STAR's last starboard helm order (Appellee's Opening Brief 23-24). Appellee apparently theorized that since the UNION STAR was headed east at the time of collision, UNION STAR must have given a starboard helm order to change her

heading eastward. The theory is ostensibly that if this is the turn signaled by the one-blast signal that Appellee can argue that at the time UNION STAR changed course to 353°, there was no whistle signal. The attempt is valiant but is not supported by any evidence. The evidence is clear that the UNION STAR sounded a one-blast whistle signal at approximately 1140, which was the time that she came to course 353° (Ex N) and about the time that Captain Sorensen heard her one-blast whistle signal very shortly after his own two-blast signal. The signals were blown almost simultaneously (TR 64:22-25; 65:1-6; 81:23-25; 82:1-6).

The fact that the UNION STAR was headed approximately due east at the time of collision is explained by the fact that the UNION STAR, as soon as the danger became apparent, sounded a three-blast signal indicating her engines were full astern. As Captain Hu and Pilot Dy indicated and as any mariner knows, the reversing of a single screw ship throws her stern to the left causing her heading to change markedly to the right (or in this case, to the east) (TR 240:14-23; 213:17-21).

---

### III

Appellant hereby adds to the authorities cited in Section II A 2 of its Opening Brief (on the adequacy of UNION STAR lookouts) the following case:

*The Pilot Boy*, 115 Fed. 873 (4th Cir. 1902).

## IV

Appellant hereby adds to the authorities cited in Section III of its Opening Brief (on failure to rule on various specific faults alleged to determine proportion of fault) the following:

*N. M. Paterson & Sons, Limited v. City of Chicago*,  
209 F. Supp. 576; 1962 A.M.C. 2215 (N.D. Ill.  
E.D., 1962);

Staring, "Contribution and Division of Damage in  
Admiralty and Maritime Cases," 45 Cal. L. Rev.  
304 (1957).

Dated, San Francisco, California,  
December 23, 1966.

Respectfully submitted,

GRAHAM JAMES & ROLPH

ALEXANDER D. CALHOUN, JR.

STANLEY F. GILLMAR

DAVID C. PHILLIPS

*Attorneys for Appellant  
China Union Lines.*

